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JAN 23 2004

OFFICE OF PETITIONS

In re Application of
Yu Liu et al.
Application No. 10/607,584
Filed: June 27, 2003
Attorney Docket No. 03501.141

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: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)
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This is in response to the petition filed under 37 CFR 1.47(a) on October 20, 2003.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a). and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on June 27, 2003 naming Yu Liu, M. Parameswara Reddy, Chitra K. Ratnayake and Edward V. Koh as inventors but without a signed declaration.

Accordingly, on September 22, 2003, a "Notice To File Missing Parts of Application" was mailed, requiring *inter alia* a properly executed oath or declaration.

In response, on October 20, 2003, the present petition was filed with a declaration signed only by joint inventors Liu, Reddy and Ratnayake. Petitioners assert that the Declaration was sent to joint inventor Koh on three occasions and that telephone calls made to the phone number of record were made and messages left but neither the declaration was returned nor the phone calls. Petitioners seek status under 37 CFR 1.47(a) since they have been unsuccessful in reaching Mr. Koh with respect to this application.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks items (1) set forth above.

In regards to item (1), petitioners have not provided sufficient proof that a copy of the complete application (specification, including claims, drawings, if any, and the declaration) was sent to the non-signing inventor.

The statement made by the attorney of record suggests that copies of the letters sent with the declaration to Mr. Koh at his last known address were attached to the petition. A review of the file does not reveal any letters that could possibly serve as proof that the

application papers were sent to the non-signing inventor.

The evidence presented does not bear proof that Mr. Koh has had the opportunity to review the application.

Petitioners may show proof that a copy of the application was sent or given to the non-signing inventor for review by providing a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

Likewise, before a *bona fide* refusal can be shown, the non-signing inventor must have been given an opportunity to review the application. Therefore, petitioners must show proof that the non-signing inventor refuses to sign the declaration after being sent or given a copy of the application papers. If there is a written refusal, petitioners should submit a copy of that refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 872-9306

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703)305-4497.



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